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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,734	06/18/2001	Mark E. Thompson	10020/15302	3618

26646 7590 07/16/2003

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ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

YAMNITZKY, MARIE ROSE

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 07/16/2003

Handwritten signature

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-22

Office Action Summary

Application No.

09/883,734

Applicant(s)

THOMPSON ET AL.

Examiner

Marie R. Yamnitzky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2003 and 02 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 92-94, 98, 100-112 and 135-141 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☒ Claim(s) 92-94, 98 and 140 is/are allowed.
- 6) ☒ Claim(s) 100, 106-112, 135-139 and 141 is/are rejected.
- 7) ☒ Claim(s) 101-105 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 18 April 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 21-22. 6) ☐ Other: _____

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1. This Office action is in response to applicants' amendment received April 18, 2003 (Paper No. 17), which amends the specification, cancels claims 1-68, 91, 95-97, 99 and 113-134, amends claims 92, 98 and 107, and adds claims 135-141.

Claims 92-94, 98, 100-112 and 135-141 are pending.

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

In view of the petition under 37 CFR 1.48(b) filed April 18, 2003, which has been granted, the new oath or declaration should be signed only by the inventors of the presently claimed subject matter and should reference previously filed amendments in the "reviewed and understand" clause.

The oath or declaration is defective because it includes a claim for priority under 35 U.S.C. 120 of four earlier filed U.S. applications while in Paper No. 17, applicants amend page 1 of the specification to delete reference to the earliest of those applications (09/153,144). In the first paragraph of page 12 of Paper No. 17, applicants state that they are withdrawing the priority claim to the '144 application.

3. The indicated allowability of claims 100 and 106-112 is withdrawn in order to raise an issue of obviousness-type double patenting over allowed claims in Application Serial No. 09/637,766.

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4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 100, 106-112, 135-139 and 141 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9 and 13-19 of copending Application No. 09/637,766. Although the conflicting claims are not identical, they are not patentably distinct from each other because the phosphorescent organometallic platinum compound including a carbon-metal bond as within the scope of the compound required by the organic light emitting device of present claims 100, 106-112, 135-139 and 141 is generic for the organometallic platinum compound required by the organic light emitting device of copending claims 9 and 13-19.

While the copending claims do not require the emissive layer to be between an anode and a cathode as required by the present claims, such a device structure would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention because the structure of anode/emissive layer/cathode is a conventional structure for an organic light emitting device.

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While the copending claims do not require the platinum compound to be present as a dopant in a host material as required by present claims 100, 106-112 and 141, the copending claim language is open and does not exclude the presence of a host material. The practice of doping a host material with a light-emitting compound to make an emissive layer of an organic light emitting device was well-known in the art at the time of the invention and the inclusion of a host material in the emissive layer of the device of the copending claims would have been an obvious modification to one of ordinary skill in the art at the time of the invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. (The conflicting claims have been allowed, and the issue fee has been paid.)

6. Claims 92-94, 98 and 140 are allowed.
7. Claims 101-105 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Any inquiry concerning this communication should be directed to Marie R. Yamnitzky at telephone number (703) 308-4413. The examiner works a flexible schedule but can generally be reached at this number from 6:30 a.m. to 4:00 p.m. Monday, Tuesday, Thursday and Friday, and every other Wednesday from 6:30 a.m. to 3:00 p.m.

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The current fax numbers for Art Unit 1774 are (703) 872-9311 for official after final faxes and (703) 872-9310 or (703) 305-5408 for all other official faxes. (Unofficial faxes to be sent directly to examiner Yamnitzky can be sent to (703) 872-9041.)

MRY

July 14, 2003

Marie R. Yamnitzky

MARIE YAMNITZKY
PRIMARY EXAMINER

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